



STATE OF MICHIGAN  
COURT OF APPEALS

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December 30, 2008

Mr. Corbin R. Davis  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Re: ADM File No. 2007-40, Proposed Amendment of MCR 7.205

Dear Mr. Davis:

The above proposed rule amendment was published for comment by January 1, 2009. I am sending this comment as chair of the Court of Appeals Rules Committee, following discussion with the Judges of the Court at a recent meeting of the bench.

In response to the proposed amendment, the Court of Appeals submits the following alternative that would toll the 12-month limitation period provided in MCR 7.205(F)(3) in a more restrictive manner than Alternative A of the original proposal:

(3) Except as provided in subrules (F)(4) or (F)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

(a) [Unchanged.]

(b) [Unchanged.]

(4) [Unchanged.]

(5) Notwithstanding the 12-month limitation period otherwise provided in subrule (F)(3), if a party's claim of appeal is dismissed for lack of jurisdiction within 21 days before the expiration of the 12-month limitation period or at any time after the 12-month limitation period has expired, a late application for leave to appeal from the same lower court judgment or order must be filed within 21 days of the dismissal of the claim of appeal or denial of a timely filed motion for reconsideration. A party filing a late application in

reliance on this provision must note the dismissal of the prior claim of appeal in the statement of facts explaining the delay.

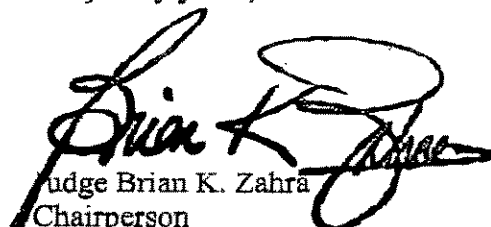
(6) ~~(5)~~ The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

This alternative is intended to accomplish the following objectives:

1. A dismissal that tolls the time for filing a delayed application for leave to appeal should be limited to a dismissal for lack of jurisdiction. No other dismissal should trigger the tolling.
2. A dismissal for lack of jurisdiction that occurs early in the 12-month limitation period for filing a delayed application should not result in tolling as sufficient time will remain to draft and file a delayed application for leave to appeal. Only if the dismissal occurs within the last 21 days of the 12-month limitation period, or after expiration of that limitation period, should tolling be deemed necessary.
3. If tolling is triggered by a jurisdictional dismissal, the delayed application for leave should be filed within 21 days of the dismissal to provide a limit to the period during which an appellee is vulnerable to an attempted appeal. Because the filing of the earlier claim signals appellant's decision to appeal, it is reasonable to expect that no more than 21 additional days would be needed to compose and file a delayed application for leave.
4. The statement of facts explaining the delay that is required in the delayed application for leave to appeal under MCR 7.205(F)(1) should reference the dismissal so that this Court is aware of the relationship between the cases.
5. The tolling provision is drafted to be contained in subrule (F)(5) rather than (F)(3)(c) because it is not logically an alternative to (F)(3)(a) or (F)(3)(b), and so that it can be cited clearly.

Thank you for the opportunity to comment on this proposal. As always, please feel free to contact me if you have any additional questions or concerns on this subject.

Very truly yours,

  
Judge Brian K. Zahra  
Chairperson  
Court of Appeals Rules Committee

cc: Chief Judge Henry William Saad  
Court of Appeals Rules Committee members